

JPA File No.: 07-016 I
AG Contract No.: P0012007000635
Project No.: CM-GDY-0(007)A
Project: Litchfield Road Fiber Optic
Conduit
Section: Wigwam Blvd - MC85
TRACS No.: SS507 01C
Budget Source Item No.: n/a

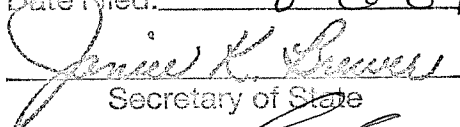
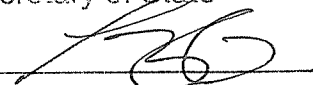
INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
CITY OF GOODYEAR

THIS AGREEMENT is entered into this date August 6th, 2007, pursuant to the Arizona Revised Statutes § 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF GOODYEAR, acting by and through its MAYOR and CITY COUNCIL (the "City"). The State and the City are collectively referred to as "Parties".

I. RECITALS

1. The State is empowered by Arizona Revised Statutes § 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.
2. The City is empowered by Arizona Revised Statutes § 48-572 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.
3. Congress has authorized appropriations for, but not limited to, the construction of streets and primary, feeder and farm-to-market roads; the replacement of bridges; the elimination of roadside obstacles; and the application of pavement markings.
4. The City has selected such project within the boundary of the City; the survey of the project has been completed; and the plans, estimates and specifications will be prepared and, as required, submitted to the State and Federal Highway Administration (FHWA) for its approval.
5. The State's interest in this Project is in the acquisition of Federal funds for the use and benefit of the City, and is authorized as the designated agent for the City. Funds expended for the Project are authorized by reason of Federal Law and regulations.
6. The City, in order to obtain Federal funds for the construction of the project, is willing to provide City funds to match Federal funds in the ratio required or as finally fixed and determined by the City and FHWA.

NO. 29104
Filed with the Secretary of State
Date Filed: 8-10-07

Secretary of State
By: 

7. The work embraced in this Agreement is to install trunk fiber optic interconnect conduit and cable infrastructure along Litchfield Road, between Maricopa (MC) 85 and Wigwam Boulevard. Efforts will include construction administered by the State, including construction engineering and contingencies (collectively referred to as CE), hereinafter referred to as the "Project." The City will be responsible for the subsequent connections to their TOC and interconnecting existing traffic signals, along with maintenance of said Project. The design was previously addressed by JPA 01-146.

Estimated Total Project Cost*	\$1,027,440.00
Construction (TRACS No.: SS507 01C)	
Federal-aid funds (capped)	\$ 500,000.00
City match	\$ 30,223.00
FFY07 Federal/MAG Close-Out Funds	(\$ 402,440.00)
Estimated City Funds @ 100%	\$ 94,777.00
Total Estimated City Funds	\$ 125,000.00

*(Includes construction, CE and contingencies).

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The State shall:

a. Submit a program to the Federal Highway Administration (FHWA) containing the above-mentioned Project with the recommendation that it be approved for construction and right-of-way activities. Approve the Project if such funds are available by FHWA for the Project, and hereby agree to be the designated authorized agent for the City. Should costs exceed the maximum Federal funds available, it is understood and agreed that the City will be responsible for any overage.

b. As required by the FHWA, the State will provide design review of the project plans, studies and related documents. When appropriate, the State will provide comments, which will be incorporated into the design documents. Obtain appropriate design documents from the City to be included in the State's construction bid package.

c. Upon approval by FHWA, and with the aid and consent of the City, the State will proceed to advertise for, receive and open bids subject to the concurrence of FHWA and the City, plus enter into a contract(s) with a firm(s) to whom the award is made for the construction and CE of the Project. The State will pay all contractors and consultants involved with the Project. Such Project is to be performed, completed, accepted and paid for in accordance with the requirements of the Project Plans, Special Provisions, and Standard Specifications for Road and Bridge Construction of the Arizona Department of Transportation (ADOT).

d. Upon execution of this Agreement and prior to bid advertising, invoice the City for its share of the Project's construction and CE costs, currently estimated in the above recap.

e. Should unforeseen conditions or circumstances increase the cost of said work such that a change in the extent or Scope of Work called for in this Agreement become necessary, the State shall not be obligated to incur any expenditure related to the Project.

f. Not be obligated to maintain said Project, should the City fail to budget or provide for proper and perpetual maintenance as set forth in this Agreement.

2. The City shall:

a. Upon execution of this Agreement and prior to bid advertising, designate the State as authorized agent for the City and within thirty-days (30) upon receipt of an invoice, deposit funds with the State in an amount equal to the difference between the total cost of the construction work, including CE provided for in this Agreement, and the amount of Federal Aid received for construction, currently estimated in the above recap. The City is entirely responsible for all costs incurred by the State in performing and accomplishing the work as set forth in this Agreement, whether covered by Federal funding or not.

b. As required by the FHWA, the State will provide design review of the project plans, studies and related documents. When appropriate, the State will provide comments, which will be incorporated into the design documents. Provide to State standards, design plans, specifications and other such appropriate design documents to the State to be included in the State's construction bid package. Be responsible for all contractor claims for extra compensation, due to delays attributable to the City.

c. Should unforeseen conditions or circumstances increase the cost of said work such that a change in the extent or Scope of Work called for in this Agreement becomes necessary, be obligated to incur and will pay for said increased costs.

d. Certify that all necessary rights-of-way have been or will be acquired prior to advertisement for bid and shall remove from the proposed right-of-way all obstructions or unauthorized encroachments of whatever nature, either above or below the surface of the Project area, and hereby certifies that all obstructions and encroachments have been or will be removed prior to the start of construction.

e. Upon completion of construction, the City shall be responsible for, at its own costs, the proper and perpetual ongoing maintenance and repairs of the said Project.

III. MISCELLANEOUS PROVISIONS

1. This terms, conditions and provisions of this Agreement shall remain in force and effect until completion of said project and related deposits or reimbursement, except any provisions for maintenance shall be perpetual, unless assumed by another competent entity. Further, this Agreement may be canceled at any time prior to the award of the project construction contract, upon thirty days (30) written notice to the other party. It is understood and agreed that, in the event the City terminates this Agreement, the State shall in no way be obligated to maintain said project and shall be reimbursed for all incurred costs to date.

2. The State assumes no financial obligation or liability under this Agreement. The City, in regard to the City's relationship with the State only, assumes full responsibility for the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost over-runs and construction claims. It is understood and agreed that any damages arising from carrying out, in any respect, the terms of this Agreement or any modification thereof, shall be solely the liability of the City and that to the extent permitted by law, the City hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, misrepresentation, directives, instruction or event arising out of the performance or nonperformance of any provisions of this Agreement by the State, any of its departments, agencies, officers and employees, or its independent contractors, the City, any of its agents, officers and employees, or its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation and attorneys' fees.

3. The cost of construction and construction engineering work covered by this Agreement is to be borne by FHWA and the City, each in the proportion prescribed or as fixed and determined by FHWA as stipulated in this Agreement. Therefore, the City agrees to furnish and provide the difference between the total cost of the work provided for in this Agreement and the amount of Federal Aid received.

4. This Agreement shall become effective upon filing with the Secretary of State.

5. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

6. The provisions of Arizona Revised Statutes § 35-214 are applicable to this Agreement.

7. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

8. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail, addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 S. 17th Avenue, Mail Drop 616E
Phoenix, Arizona 85007
(602) 712-7525
(602) 712-7424 Fax

City of Goodyear
Attn: Public Works Director
120 E. Western Ave.
Goodyear, Arizona 85338
(623) 932-3910
(623) 932-1177 Fax

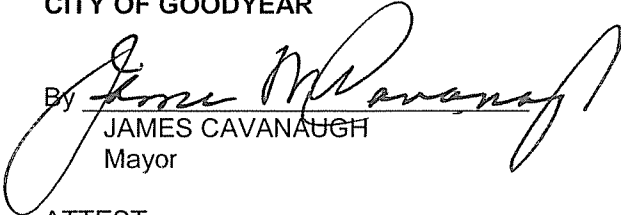
9. This Agreement is subject to all applicable provisions of the Americans with Disability Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable Federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

10. Non-Availability of Funds: Every payment obligation of the State under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligations. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments as a result of termination under this paragraph.

11. In accordance with Arizona Revised Statutes § 11-952 (D) attached hereto and incorporated herein is the written determination of each party's legal counsel and that the parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first above written.

CITY OF GOODYEAR


By 
JAMES CAVANAUGH
Mayor

ATTEST:

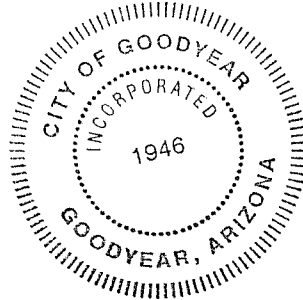
By 
DEE COCKRUM
Clerk

STATE OF ARIZONA

Department of Transportation

By 
DALE BUSKIRK
Division Director

G: 07-016 Goodyear Fiber Optic Conduit
Initial Draft 3/13/07 ghc
Revised 3/19/07 ghc
Revised for closeout funds 6/6/07 ghc
FINAL6/15/07 ghc

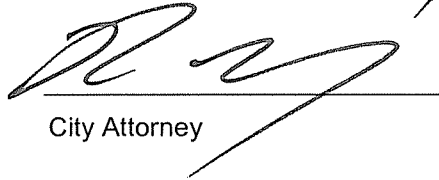


ATTORNEY APPROVAL FORM FOR THE CITY OF GOODYEAR

I have reviewed the above referenced Intergovernmental Agreement between the State of Arizona, acting by and through its DEPARTMENT OF TRANSPORTATION, and the CITY, an Agreement among public agencies which, has been reviewed pursuant to A.R.S. § 11-951 through § 11-954 and declare this Agreement to be in proper form and within the powers and authority granted to the CITY under the laws of the State of Arizona.

No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this 12 day of July, 2007.



City Attorney

RESOLUTION NO. 07-1168

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF GOODYEAR, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE CITY MANAGER TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT WITH THE ARIZONA DEPARTMENT OF TRANSPORTATION TO PROVIDE FEDERAL FUNDING FOR THE INSTALLATION OF FIBER OPTIC CABLE AND CONDUIT ON LITCHFIELD ROAD FROM MC 85 TO WIGWAM BOULEVARD; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, State is empowered by Arizona Revised Statutes § 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State; and

WHEREAS, the City is empowered by Arizona Revised Statutes § 48-572 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City; and

WHEREAS, Congress has authorized appropriations for, but not limited to, the construction of streets and primary, feeder and farm-to-market roads; the replacement of bridges; the elimination of roadside obstacles; and the application of pavement markings; and

WHEREAS, the City has selected such project within the boundary of the City; the survey of the project has been completed; and the plans, estimates and specifications will be prepared and, as required, submitted to the State and Federal Highway Administration (FHWA) for its approval; and

WHEREAS, the State's interest in this Project is in the acquisition of Federal funds for the use and benefit of the City, and is authorized as the designated agent for the City. Funds expended for the Project are authorized by reason of Federal Law and regulations; and

WHEREAS, the City, in order to obtain Federal funds for the construction of the project, is willing to provide City funds to match Federal funds in the ratio required or as finally fixed and determined by the City and FHWA; and

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GOODYEAR, MARICOPA COUNTY, ARIZONA, AS FOLLOWS:

SECTION 1. The City Manager is authorized to execute the attached Intergovernmental Agreement between the City of Goodyear, Arizona, and the State of Arizona for the funding of installation of fiber optic conduit and cable on Litchfield Road.

PASSED AND ADOPTED by the Mayor and Council of the City of Goodyear, Arizona, this 9th day of JULY, 2007.


James M. Cavanaugh, Mayor

Date: July 10, 2007

ATTEST:

 Dee Cockrum, City Clerk

Dee Cockrum, City Clerk



Roric Massey, City Attorney

~~Roric Massey, City Attorney~~

STATE OF ARIZONA

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) SS.


County of Maricopa)

I, the undersigned, Dee Cockrum, being the duly appointed, qualified and acting City Clerk of the City of Goodyear, Maricopa County, Arizona, certify that the foregoing Resolution No. 07-1168 is a true, correct and accurate copy of Resolution No.1168, passed and adopted at a regular/special meeting of the Council of the City of Goodyear, Maricopa County, Arizona, held on the 9th day of JULY, 2007, at which a quorum was present and, by a 7-0 vote 7 members voted in favor of said ordinance.

Given under my hand and sealed this 10th day of JULY, 2007.


Dee Cockrum, City Clerk

Dee Cockrum, City Clerk

<p>TERRY GODDARD Attorney General</p>	<p> OFFICE OF THE ATTORNEY GENERAL STATE OF ARIZONA</p>	<p>CIVIL DIVISION TRANSPORTATION SECTION Writer's Direct Line: 602.542.8855 Facsimile: 602.542.3646 E-mail: Susan Davis@azag.gov</p>
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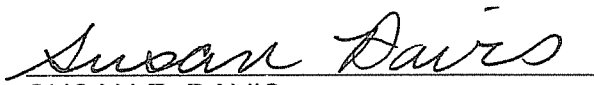
INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. P0012007000635 (**JPA 07-016-I**), an Agreement between public agencies, i.e., The State of Arizona and City of Goodyear, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: August 1, 2007

TERRY GODDARD
Attorney General


SUSAN E. DAVIS
Assistant Attorney General
Transportation Section

SED:mjf:36437
Attachment